THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.100 OF 1996

Dt. 24th August, 2005.

Between:-

V.Ramakrishnam Naidu, s/o Errappa Naidu,

Hindu, aged about 59 years, cultivation,

R/o Pullamanaidu Kandriga village,Nethakuppam

Post, Ramachandrapuram Mandal, Chittoor District

..Petitioner

A N D

1. The Joint Collector, Chittoor, Chittoor District and Others

…Respondents.

THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.100 OF 1996

ORDER:

1. Petitioner along with Nagamma gave a representation to the Revenue Divisional Officer, Chittoor, alleging that ignoring the fact that they have been in possession and enjoyment of extents of 30 and 35 cents respectively in S.No.160/1 of Neethakuppam village from over 35 years, the Mandal Revenue Officer (2nd

respondent) assigned that land along with the remaining land in the Survey Number to N.Venkatesu Mandadi (3rd respondent) and so assignment of the land in their possession made in favour of the 3rd respondent may be cancelled and the land in their possession may be assigned to them. After making an enquiry the Mandal Revenue Officer sent up proposals for cancellation of the assignment made in favour of the 3rd respondent. After issuing, a show cause notice assignment of land in favour of the 3rd respondent was cancelled, against which 3rd respondent preferred an appeal to the Commissioner of Land Revenue, who by his order dated 4-8-1994 allowed the appeal and remanded the case to the Joint Collector for fresh enquiry. After making a fresh enquiry, the Joint Collector (1st respondent) passed the order impugned in this petition, inter alia holding that petitioner, who is in possession of 36 cents in S.No.180/1, is not entitled to assignment of any land, as he is wealthy pattedar owning more than Ac. 3-00 of land adjoining the aforesaid Ac. 0-36 cents and that Desamma a woman belonging to a schedule caste, who is in possession of 0-22 cents in that Survey Number can be assigned those 0.22 cents and that the remaining 0.72 cents in that Survey number can be reassigned to the 3rd respondent by removing the encroachments, therein. Hence, this petition.

2. The contention of the learned counsel for the petitioner is that since respondents 1 and 2, in the counter affidavit filed on their behalf, clearly admitted that all the lands owned by the petitioner are dry lands, the observation of the first respondent in the order impugned that petitioner is owning Ac. 3-00 of wet land adjoining the land in S.No.160/1 is not correct and since no opportunity of being heard was given to the petitioner by the 1st respondent before passing the order impugned the same may be set aside and an enquiry afresh may be held.

3. The contention of the learned Asst. Government Pleader is that 1st respondent passed the order impugned on merits only after affording an opportunity of being heard to the petitioner and since petitioner is owning more than Ac. 4-78 cents of land in various survey numbers, it was held that he is not eligible for assignment of the land in S.No.160/1 and so petitioner is not entitled to any relief.

4 . The contention of the learned counsel for the 4th respondent is that since petitioner who has an effective alternative remedy of appeal did not take recourse to that remedy and since no application for assignment was made by him, he is not

entitled to any relief.

5. The contention that there is no prayer for assignment of land by the petitioner cannot be accepted because, the specific prayer in the representation made to the Revenue Divisional Officer by the petitioner and Nagamma is to assign land to them, after canceling assignment made in favour of the third respondent.

6. The fact that the petitioner filed this petition without exhausting the remedy of appeal per se is not a ground for dismissing this petition, as directing the petitioner, at this stage, to prefer an appeal to the Commissioner of Land Revenue after a lapse of about nine years, would result in hardship to the parties. According to the counter affidavit filed on behalf of the respondents 1 and 2 and even according to the copy of the pattedar pass book produced by the petitioner, petitioner owns only Ac.4-78 ½ cents of dry land in various survey numbers. Admittedly persons owning less than Ac.2 ½ of wet land or Ac. 5-00 of dry land are eligible for assignment of Government land. Since, petitioner owns Ac. 4-78 cents of dry land, the assumption of the 1st respondent that petitioner is not eligible for assignment is not and cannot be correct.

7. For reasons best known to 3rd respondent he did not put in his appearance in this petition. The learned Assistant Government Pleader stated that 3rd respondent filed O.S.No. 506 of 1988 in the Court of the Principal District Munsiff, Puttur and obtained an order of injunction in I.A.No.1314 of 1988.

8. In the circumstances of the case, I dispose of this petition with a direction to respondents No.1 and 2 to consider the application of the petitioner also, along with the application of 3rd respondent for assignment of land in S.No.160/1 keeping in view their respective land holding and pass appropriate orders as per the Rules in force, as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order, subject to the judgment in O.S.No. 506 of 1988 filed by the 3rd respondent.

9. Petition is ordered accordingly. No costs.

_____

C.Y.Somayajulu, J.

24th August, 2005.

KM

THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

–

–

–

–

–

–

–

–

–

–

–

–

–

W.P.No.100 OF 1996

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

24th August, 2005.